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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,908	12/04/2003	John (aka. Xiaoqiang) Du		4189

7590 11/21/2006
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EXAMINER

LOWEN, ALYSSA

ART UNIT PAPER NUMBER

3711

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,908	Applicant(s) DU, JOHN (AKA. XIAOQIANG)	
	Examiner Alyssa M. Lowen	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

2. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Rejections - 35 USC § 112

3. Claims 1-17 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 and 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Binkley (6568985). Binkley discloses a multi-purpose projecting device having a launching tube with a circular cross section (Fig. 2) that includes a lower section of cylindrical shape (24) with an open upper end (43) and an enclosed lower end (25) and a four part upper section of different shapes and diameters (Fig. 2) that includes cylindrical upper (26), middle (28) and lower (20) sections as well as a circular platform shape (31) for joining the upper and middle parts (Fig. 2). The diameter of the lower section (20) of the upper section has a smaller diameter so that it may be inserted into the lower section of the launching tube (Fig. 3A) to freely slide and reciprocate therein when the user pushes the lower section up in order to compress air and propel an object (Figs. 3A-3B). The diameter of the lower end of the middle part is bigger than the diameter of the lower part thereby forming a collar where the two parts join for stopping the mutual movement between the upper and lower sections (Figs. 2 & 3B). The entire launching tube is made of plastic (column 2 lines 54-55). The limitation of the launching tube being used to propel and disseminate confetti, paper disks or fluid contained in a

cartridge is merely a recitation of the intended use of the device. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2, 7-9, 11, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (5529527) and Watkins (2002/0013119). Watkins discloses a plurality of cylindrical one time use cartridges (62') that may be refilled after each shot (column 1 lines 63-67 & column 2 lines 1-6) having an inside diameter equal to the outer diameter of a launching tube's upper end such that the upper end of the tube inserts into the lower end of the cartridge (Fig. 8). The cartridge comprises a container (62'), a plastic cap, a cork or tissue paper (column 3 lines 53-60) for sealing the bottom of the cartridge (Fig. 1) and a plurality of contents including confetti (22). The cartridge also has an inner collar flange at its lower end (114) that can be used to help hold the plug member (18) and confetti (22) within the container (Figs. 1 & 8). Watkins discloses the basic inventive concept, substantially as claimed, with the exception of a top foam cover. Watkins (2002/0013119) discloses a confetti cartridge having a top cover (24). It

would have been obvious to one of ordinary skill in the art from the teaching of Watkins (2002/0013119) to include a top cover in order to keep the confetti contents within the cartridge before it is launched (pages 1-2 paragraph 15). With regard to the top cover being made of foam covered in a plastic film, a piece of cardboard, plastic film, or waterproof plastic tape being used to seal the bottom of the cartridge, and the contents of the container including paper disks, fluid with perfume, fiber, string or fabric, the examiner notes that mere selection of known materials as recited in claims 2, 7-9, 11 and 14 on the basis of suitability for the intended use would be entirely obvious. *See in re Leshin, 125 USPQ 416 (CCPA 1960)*. Therefore, it would have been obvious to one of ordinary skill in the art to provide Watkins with the materials recited in claims 2, 7-9, 11 and 14 in order to use known materials suitable for the intended use.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw (5826535). Shaw discloses a flag having two rings (6,7) on one side for easily fixing the flag to an upper end of a cylindrical tube (Fig. 1). The limitation of affixing the flag to the upper end of a launching tube or a cartridge is merely a recitation of the intended use of the device. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Shaw discloses the basic inventive concept, substantially as claimed, with the exception of the rings being made of elastic string. The examiner notes that a mere selection of known materials as recited in claim 3 on the basis of suitability for the intended use would be entirely

obvious. *See in re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art to provide Shaw with the material recited in claim 3 in order to use known materials suitable for the intended use.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Binkley and Siu (6808436). Binkley discloses the basic inventive concept, substantially as claimed, with the exception of the bottom of the lower end having three fan shaped holes around the center which is covered by a soft plastic disk fixed to the center of the bottom by glue. Siu discloses a cylindrical projecting device having a lower section of a launching tube with a bottom having a plurality of holes (41) around the center of the bottom (Fig. 4) that are covered by a circular disk (42) affixed to the center of the bottom (Fig. 3). It would have been obvious to one of ordinary skill in the art to have holes and a disk in the bottom of the lower section of the launching tube in order to allow a user to more easily and smoothly move the base member (column 3 lines 42-50). In regard to the disk being made of soft plastic, the examiner notes that a mere selection of known materials as recited in claim 4 on the basis of suitability for the intended use would be entirely obvious. *See in re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art to provide Siu with the material recited in claim 4 in order to use known materials suitable for the intended use. With regard to the bottom having three fan shaped holes and the disk being fixed to the center of the bottom with glue, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have three fan shaped holes and use glue to attach the disk because Applicant has not disclosed that three fan shaped holes or glue

provide an advantage, are used for a particular purpose, or solve a stated problem.

One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a plurality of circular holes since it allows air to enter the tube and attaching the disk via a knob because it would allow the disk to rotate.

Therefore, it would have been an obvious matter of design choice to modify the references to obtain the invention as specified in claim 4.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (5529527) and Watkins (2002/0013119). The references disclose the basic inventive concept, substantially as claimed, with the exception of the foam cover taking the shape of a cylinder, a rocket, fruit or a male sex organ. At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to have the cover take the form of a cylinder, a rocket, fruit or a male sex organ because Applicant has not disclosed that these shapes provide an advantage, are used for a particular purpose or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the circular cover because it would retain the confetti elements within the cartridge before launch. Furthermore, matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (5529527), Watkins (2002/0013119) and Bryan (2002/0004942). The device of Watkins and Watkins discloses the basic inventive concept, substantially as claimed with the

exception of the non-fluid contents of the cartridge being covered with fluorescent materials. Bryan discloses toy devices including textiles and paper that glow (page 2 paragraph 13) due to the addition of fluorescent material (abstract). It would have been obvious to one of ordinary skill in the art to make the non-fluid contents of the cartridge with fluorescent material in order to make novelty items that can glow to entertain and amuse a user (page 2 paragraphs 11-12).

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (5529527) and Watkins (2002/0013119). The references disclose the basic inventive concept, substantially as claimed, with the exception of using paper disks with lucky phrases and numbers thereon. At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to have lucky phrases and numbers printed on the paper disks because Applicant has not disclosed that printing phrases or numbers on the disks provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well without the printed matter because regular confetti can still entertain and amuse a user.

Furthermore, matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art.

In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (5529527), Watkins (2002/0013119) and Sink (5676450). The combination of the Watkins references discloses the basic inventive concept, substantially as claimed, with

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the exception of the cartridge being made of transparent plastic with a flash-producing device inside the tube. Sink discloses forming toys with transparent cylinders having flash-producing devices within the tubes that are activated by a switch (column 2 lines 65-67 & column 3 lines 1-15). It would have been obvious to one of ordinary skill in the art from the teaching of Sink to include a lighting effect to the cylindrical cartridge of Watkins and Watkins in order to increase the visual appeal and entertainment value of the device to a user.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Binkley. Binkley discloses the basic inventive concept, substantially as claimed, with the exception of the launching tube being covered in fluorescent material. At the time the invention was made it would have been an obvious matter of design choice to a person of ordinary skill in the art to cover the launching tube with fluorescent material because Applicant has not disclosed that the fluorescent material provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well without the fluorescent material because a launching tube capable of projecting an object is created. Furthermore, matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Lowen whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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